

State of Delaware EPCRA Reporting



Reporting Year 2018
Presentation #1

REGULATORY OVERVIEW

This presentation is available online...

The screenshot shows a web browser window displaying the Delaware State Emergency Response Commission website. The browser's address bar shows the URL: www.dnrec.delaware.gov/SERC/Services/Pages/DownloadFormsorSoftware.aspx. The website header features the Delaware state seal and the text "State of Delaware The Official Website of the First State". Below the header is a search bar and a navigation menu. The main content area is titled "Online Reporting - Tier II Manager" and "Emergency Planning and Community Right-to-Know". A red arrow points to a "Click Here" link, which is a red button with white text. The left sidebar contains a list of links under the heading "State Emergency Response Commission", including "Services", "About SERC", "Calendar of Events", "Contact Information", "Related Links", "Reports/Documents", "SERC Committees", "Site Map", and "What's New". The main content area contains the following text:

The Delaware TIER II MANAGER™ online reporting system can be accessed at: <https://tierii.dnrec.delaware.gov/TierII>

Instructions are available here, as well as within the Delaware TIER II MANAGER™.

Overheads for the Tier II/EPCRA training workshops are available here.

Delaware TIER II MANAGER™ BACKGROUND

Annual Tier II reports (often referred to as EPCRA Section 312 reports) in Delaware can be submitted on-line using Tier II Manager™. EPCRA Section 302 and 311 reports can be submitted on-line as well. The system is accessible through the Internet using typical Web browsers, and no special software is necessary. Facilities that have previously reported will not need to re-enter all their data. Instead, they can update and submit using their previous data already loaded in the system. Tier II Manager™ also offers the option to pay fees on-line by a variety of methods. For those that do not wish to report or pay on-line, the traditional forms of reporting and payment are still available. **However, we strongly urge facilities to use the on-line reporting system.** With Tier II Manager™, updated information submitted by facilities can be viewed immediately by emergency planners and responders, avoiding delays associated with processing of paper forms. In addition, the system has built in edit checks, to help avoid common errors.

Tier II Reports are due annually by the first day of March each year.

This will be the second year for our new version of Tier II Manager™, and our 10th full year overall with the Web-based system. Issues encountered with the new version last year have been addressed, and additional minor updates have been made to the reporting system. Any changes will likely not be noticed by the user.

It is highly recommended that the Tier II Manager™ system be used for electronic reporting and certification. If you do not have access to a computer or the internet, please call the EPCRA Reporting Program at (302) 739-9405.

* For more detailed assistance in using Tier II Manager™, please call the Delaware EPCRA Reporting Program at (302) 739-9405, or send an e-mail to Christie Ray (Christie.Ray@state.de.us) or Bill Davis (William.BDavis@state.de.us).

We'll see this screen again in Presentation #2.

The Federal Law

established in 1986

Usually Referred to as:

Emergency
Planning and
Community
Right-to-know
Act

U.S. EPA Regulations in 40 CFR
Parts 355, 370, and 372

Also Known As:

Title III of the
Superfund
Amendments and
Reauthorization
Act

(SARA Title III)

And the Delaware Code...

Delaware Code (1991)

Title 16 Chapter 63

<http://delcode.delaware.gov/title16/c063/index.shtml>

SERC and LEPCs

- EPCRA established a network for planning
- Required each State to establish a State Emergency Response Commission (**SERC**)
- SERCs then establish emergency planning districts and appoint Local Emergency Planning Committees (**LEPCs**)
- Promote public involvement in managing chemical risks in their community

The organization of emergency planning

Local **E**mergency **P**lanning **C**ommittees

Meet every “odd” month

✧ **Sussex County** (2nd Thursday 10:00 at Georgetown 911 center)

✧ **Kent County** (2nd Tuesday 10:00 at Dover 911 center)

✧ **New Castle County** (2nd Monday 2:30 at NCC Fire School)

✧ **City of Wilmington** (2nd Friday 10:00 at Wilmington OEM)

➤ Emergency Planners, Government Agencies,
Facility Representatives, & Public Representatives

◆ *Connecting those with chemicals with those who
plan for & respond to emergencies*

EPCRA Sections

Accomplished via *TierIIManager*TM

302 & 303* — Emergency Planning Notification

311 - MSDS List and updates

312 — Annual Hazardous Chemical Inventory (Tier II) Reporting

Executed through other reporting systems:

304 — Emergency Release Notification

313 — Toxics Release Inventory (**TRI**) Reporting

* Ongoing LEPC communication required

Sections **302/303**

Emergency Planning and Notification

- Facilities with Extremely Hazardous Substances (EHSs) above Threshold Planning Quantities (TPQs)
- Provide initial notification within 60 days to LEPC & EPCRA Reporting Program
- Identify Facility Emergency Coordinator
- Provide info for planning and notice of changes
- Exemptions for 311/312 do not apply

Section 304

Emergency Release Notification

- Facilities and transporters
- List of substances & reportable quantities (**RQ**)
- Immediate initial notification (within 15 minutes) to
 - **1-800-662-8802**: SERC/DNREC, *and*
 - **1-800-424-8802**: National Response Center, *and*
 - **1-866-274-0884**: affected LEPC(s)
- **Written follow-up report**
- **Regulation 1203, Title 7** of Delaware Administrative Code

Release Reporting

Section 304 and
DE Regulation 1203
requirements

**For more information
see the SERC webpage:**

<http://www.dnrec.delaware.gov/SERC/Services/Pages/EmergencyReleaseNotification.aspx>

EPCRA Section **312**

Annual Hazardous Chemical Inventory Report **Tier II**

Due **March 1st**

Every Year

covering the previous calendar year

Section 312 (Tier II)

Covered Facilities

Reporting requirements apply to any **facility** that is required to provide a Safety Data Sheet (SDS) for a **hazardous chemical** present at the facility in accordance with Federal OSHA or Delaware Worker Right-to-Know.

Facility means all buildings, equipment, structures and other stationary items that are located on a single site or on contiguous or adjacent sites *and* which are owned or operated by the same person.

Section 312 (Tier II)

Covered Chemicals

- Hazardous Chemicals

- There is no specific list of these chemicals
- Defined by OSHA (29 CFR 1910.1200) to mean any chemical (element, chemical compound or mixture of elements and/or compounds) which is a ***physical hazard*** or a ***health hazard***

- Extremely Hazardous Substances (EHSs) –

- A specific list of substances designated by the U.S. EPA in 40 CFR Part 355
- Can also be found in EPA's general reference document, ***List of Lists***
- And can be found at the SERC webpage:

<http://www.dnrec.delaware.gov/SERC/Services/Pages/HazardousChemicalInventoryReporting.aspx>

OSHA Regulations Provide for the Following **Exemptions**

(as stated in 29 CFR Section 1910.1200(b)(6))

- (i) Hazardous Waste when subject to Hazardous Waste regulations
- (ii) Hazardous substances that are subject to remedial or removal action
- (iii) Tobacco or tobacco products;
- (iv) Wood or wood products
- (v) “Articles”
- (vi) Food or alcoholic beverages
- (vii) Drugs defined by the Federal Food and Drug Cosmetic Act
- (viii) Cosmetics
- (ix) Consumer products covered by the Consumer Product Safety Act
- (x) Nuisance particulates
- (xi) Ionizing and nonionizing radiation
- (xii) Biological hazards

Exact wording can be found in our instructions and on our Web site

Federal and State EPCRA reporting regulations provide exemptions for the following substances:

- (a) Any food, food additive, color additive, drug or cosmetic regulated by the Food and Drug Administration;
- (b) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;
- (c) Any substance to the extent it is used:
 - (1) For personal, family or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;
 - (2) In a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual;
 - (3) In routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Additional Exemptions

Chemicals or substances **in transportation** or being stored incident to such transportation, including the transportation and distribution of natural gas, are not subject to the inventory reporting requirements.

- Natural Gas piping to a facility is exempt
- If material is under active shipping papers
- Railcar exemption ends when facility takes possession

Caution

Since many of these exemptions can be easily misinterpreted, please contact the Delaware EPCRA Reporting Program if you have any questions concerning applicability of these exemptions to chemicals at your facility.

Because Delaware's program is more stringent, EPA's guidance may not be applicable.

Section **312** (Tier II) Thresholds

Delaware Thresholds are lower than Federal

A substance may be reportable if present at the facility at any time during the calendar year at levels that equal or exceed the following thresholds:

- **Hazardous Chemical**
 - **55 gallons** or **500 pounds**, whichever is lower
- **Extremely Hazardous Substances (EHSs)**
 - 55 gallons, 500 pounds or the Threshold Planning Quantity (**TPQ**), whichever is lower. (~**170** listed chemicals have TPQs < 500 lbs.)
- **Substances used solely for building heating purposes (at the site)**
 - **10,000 pounds**

EHS Threshold Determination

Aggregation of EHSs

To determine if the threshold has been met for an EHS, the amount of the EHS in both **pure form** and in **mixtures** at the facility must be aggregated. If the threshold for the EHS is met, the EHS and/or the mixtures containing EHS must be reported.

EHS Mixture Determination

- If an EHS is present in a mixture in a particular container, determine the quantity (lbs) of the EHS in that container.
 - If the concentration of an EHS is $< 1\%$ (or 0.1% for a carcinogen) in the mixture, you don't have to count that EHS.
- You **MUST** aggregate the amounts of EHS in both the pure form and the mixture to determine if the TPQ or the reporting threshold (*whichever is lower*) is present.
- If the threshold for the EHS is met, the EHS and/or the mixtures containing EHS must be reported.

Mixture Determination for Hazardous Chemicals

- Aggregation of Non-EHS hazardous chemicals present in mixtures is not required.
- Substance should be reported on Tier II in the same manner in which it is described by the SDS.(eg. If you have batteries on site, if the SDS is for Lead Acid Battery, report the chemical as Lead Acid Battery. Do not report 2 separate chemicals: Lead & Sulfuric Acid)
- Keep in mind the purpose of reporting. Information is distributed to emergency planning and response organizations.

Summary

Determining if a chemical is reportable

1. Is the substance a hazardous chemical or EHS for which you must have or prepare an MSDS in accordance with Federal OSHA or Delaware Worker Right-to-Know?
 - If yes, continue
 - If no, it is not a reportable substance
2. Was the applicable threshold met or exceeded?
 - If yes, continue
 - If no, it is not a reportable substance
3. Do any of the exemptions apply?
 - If yes, the substance is NOT reportable
 - If no, substance MUST be reported under § 312

Tier II Reporting Fees

- Developed in cooperation with State Emergency Response Commission (SERC)
- Per Statute, Fees are due **March 1st**
- Fees are appropriated to SERC for allocation primarily to LEPCs and data collection and management
- Legislation passed in 2002 allows support for portable decontamination trailers in each county

Tier II Reporting Fees



Where does the money go?

Tier II Reporting Fees

- Fees are as follows:
 - **\$60** per **hazardous chemical**
 - **\$100** per **extremely hazardous substance**
 - Fees for **mixtures** depend on concentration of EHSs:
 - Less than 10% by weight EHS = \$60
 - Equal to or greater than 10% EHS = \$100

\$0 per *voluntary* chemicals

(those which do not meet the reporting threshold)

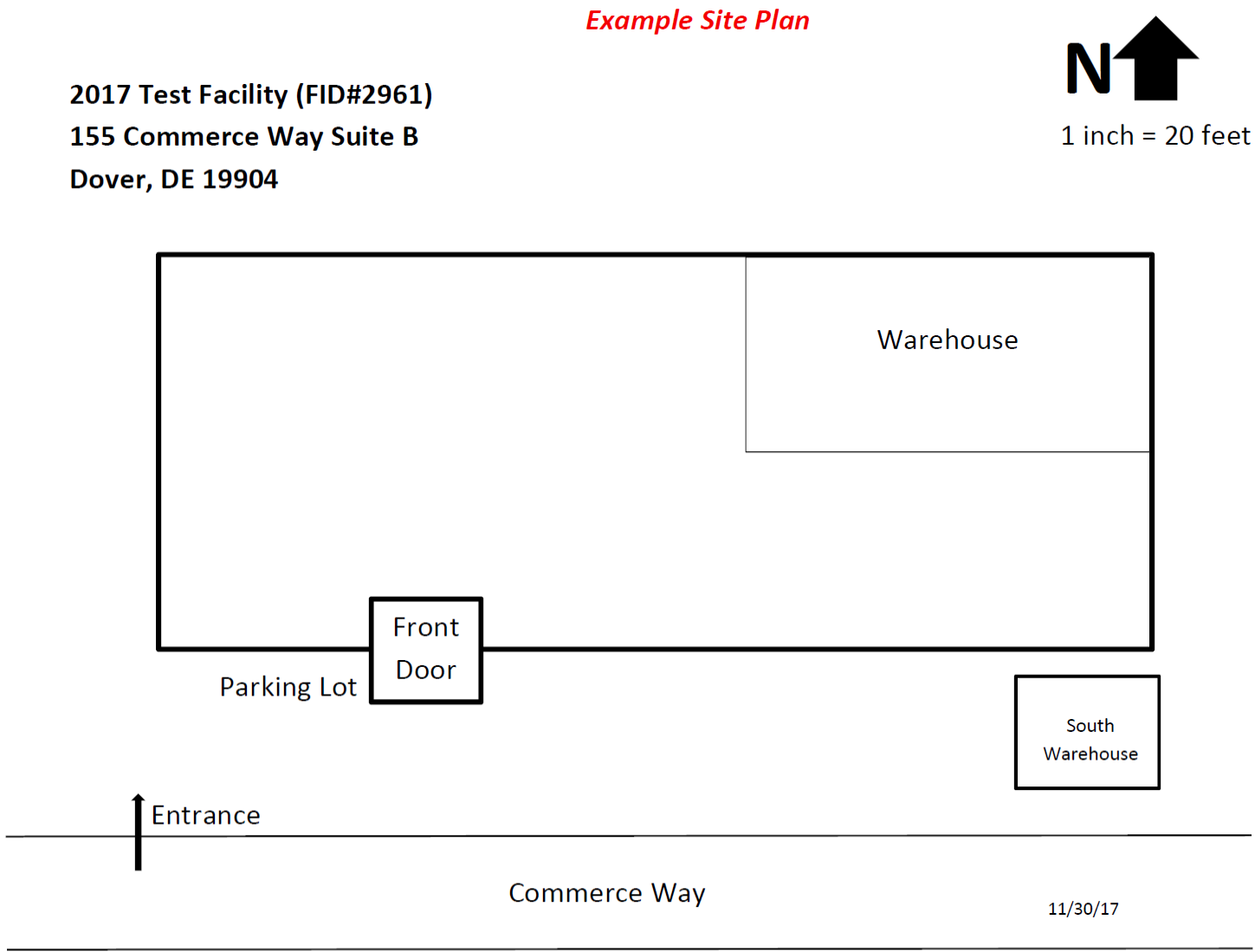
Tier II Reporting Fees

- Cap of **\$5000** per facility per year
- Facilities **exempt** from fees:
 - Federal, state, county, and local government facilities
 - Non-profit organizations
- Substances exempt from fees:
 - **Motor Vehicle Fuels** are exempt when offered for ***retail sale*** at the facility (Ex. Gasoline & Diesel)

Tier II Site Plot Plans

- required with Tier II Report
- submit the plan in **pdf** or **tif** format
- upload the plan into *TierIIManager*TM
- must be clear and easy to read
- label with facility name and address
- include a north arrow
- draw to scale or use dimensions
- sketch all structures, and inside & outside chemical storage locations reported. Include any obstacles that could be encountered by emergency personnel (such as fences).
- inside storage requires interior layout sketch
- show site and building entrances
- use the same terms on the Plot Plan as in the Inventory Report (step 2 / Storage Location)

Example site plan...



We'll say more about this in Presentation #2.

Changes

for the **2018** Reporting Year

None

Updates on Delaware EPCRA

“What’s New” web page:

<http://www.dnrec.delaware.gov/SERC/Pages/What'sNew.aspx>

Special Considerations

Centralized Reporting

In Delaware, by submitting electronically via the web-based portal *TierIIManager*TM, the requirement to report to SERC, LEPC, and the local fire department under Federal law is satisfied.

Change of Ownership

Both Parties are responsible for their portion of the year.

- New Owner can cover all the year if seller agrees
- Can't avoid reporting liability by language in sale contract

Owners & Operators

- “The owner or operator of a facility which is required to prepare or have available MSDS's must comply with the requirements of 40 CFR 370, Subpart B.” (EPA regarding 311/312 reporting)
 - “Private parties cannot by contract exempt themselves from liability created by the statutory provisions of EPCRA.”
 - “The owner of the facility whose only connection to the facility is a real estate interest and has no employees at the facility would not be required to have MSDS's.” (EPA regarding 311/312 reporting)

Owners & Operators

- A contractor could be considered an operator of the facility or of a portion of the facility depending on if they have enough authority.
- For **302**, public warehouse owners may make notification (if tenants exceed TPQ).
 - Subtle but important nuance vs. 311/312
 - 302 not based on MSDS applicability
 - No “*only real estate interest*” out

EPCRA Section 311

Safety Data Sheet List Reporting

- Must submit *list* of *hazardous chemicals* on site above threshold quantities
- Submitting information via *TierIIManager*TM is *the list*
- Covered facilities & chemicals, thresholds, & exemptions are **identical to 312/Tier II**

EPCRA Section 311

- Initial reporting is when the facility first opens or within 3 months of becoming subject to reporting
- Updates within 3 months when chemicals first exceed thresholds on-site

EPCRA Section 311

Per the EPA, an annual Tier II report can serve as an initial list for any facility that failed to submit an initial list.

The real substance of the Section 311 requirement is that it provides for updates (within 3 months) to the chemical inventory data for a facility in between the annual Section 312 reports.

311 & 312 Similarities

Identical:

- Covered chemicals
- Covered facilities
- Thresholds
- Exemptions

Both are submitted using *TierIIManager*TM

311 & 312 Differences

Section 311

- Initial submission and updates within 3 months
- Submit List of Chemicals
- No Fees

Section 312

- **Annually by March 1st for the previous calendar year**
- **Submit Tier II Forms**
- **Reporting Fees**

EPCRA Section 313

Toxic Release Inventory (**TRI**)

- Specific facilities – based on # of employees and industrial classification codes
- List of TRI chemicals
- Threshold quantities – manufacture or process 25,000 lbs/yr or otherwise use 10,000 lbs/yr
- PBT Substances – significantly lower thresholds
- Forms due July 1 for previous calendar year
- Annual report
- For more information contact:

Deb Nielsen at 302-739-9405

DE EPCRA Chemicals and Reporting Thresholds

Section	Chemicals Covered	Thresholds
302/303	EHS List by EPA (over 360 chemicals)	Threshold Planning Quantity (TPQ)
304 (DE Reg 1203)	>1,000 substances	Reportable quantity, released in a 24-hr period
311	Any substance that has a physical or health hazard	Lower than Federal Thresholds EHS: 55 gallons, 500 lbs or the TPQ, whichever is lower; Hazardous chemical: 55 gallons or 500 lbs on site at any one time; Heating Fuel: 10,000 lb when used on site
312	Same as 311	Same as 311
313	650 + toxic chemicals and categories	Manufactured or processed: 25,000 lbs per year; Otherwise Used: 10,000 lbs a year; *** Certain persistent bioaccumulative toxics have lower thresholds

Reporting Schedules

Section	Due Dates	To Whom
302/303	One time notification AND Updates as necessary: within 60 days of EHS exceeding TPQ	DNREC & LEPC (<i>TierIIManager™</i>)
304	Each time a release above a reportable quantity occurs	DNREC, NRC & LEPC
311	Initial Submission; And updates within 3 months for chemicals first exceeding threshold	DNREC (<i>TierIIManager™</i>)
312	Annually by March 1	DNREC (<i>TierIIManager™</i>)
313	Annually by July 1 (*Delaware has an agreement with EPA. Facilities report on-line to EPA only and EPA sends data copy to the State)	EPA & DNREC**

Contacts

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Call or visit the website:

www.dnrec.delaware.gov/SERC

*Contact info for LEPCs on Web site